

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:) PROTECTIVE PANTS, SUCH AS FIREFIGHTER'S
WILLIAM L. GRILLIOT et al) PANTS, WITH PUNCTURE-RESISTANT LAYERS
Serial No. 10/695,404) AT BELOW-KNEE REGIONS OF LEG PORTIONS
Filed October 28, 2003)
) Confirmation No. 5637
) Group Art Unit 3765
) Examiner Alissa L. Hoey

APPELLANT'S BRIEF ON APPEAL

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This brief is in support of the Notice of Appeal filed March 25, 2009.

REAL PARTY IN INTEREST

The real parties in interest are Morning Pride Manufacturing, L.L.C. owner by Assignment and Honeywell International, L.L.C. by Stock Purchase Agreement.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Claims 1-8 are pending in the application.

STATUS OF AMENDMENTS

There have been no amendments filed subsequent to the final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 is directed toward a pair of protective pants (10) having an upper portion (12) which when worn covers a wearer's torso between the wearer's waist and the wearer's legs, and further having two leg portions (14), each of which when worn covers one of the wearer's legs (page 3, lines 11-18, Fig. 1). Each leg portion (14) has an upper region (16) which extends downwardly from the upper portion (12), and a lower region (18) which extends upwardly from a lower end (20) of the leg portion (14) toward the upper region (16) and which terminates not higher than where the leg portion (14) when worn covers the wearer's knee (page 3, lines 11-18, Fig. 1). The lower region has a puncture resistant layer (22) made from a cloth fabric that is puncture resistant, the puncture resistant layer (22) extending upwardly from the lower end (20) of the leg portion (14) and surrounding the lower end of the leg portion (page 3, lines 18-21, Figs. 1-3). The upper region (16) of each leg portion (14) has an outer layer (24) of abrasion-resistant material, the abrasion-resistant material being less resistant to puncture than the puncture-resistant cloth fabric (page 3, line 22 - page 4, line 4).

Independent claim 5 is directed toward a pair of protective pants (10) having an upper portion (12) which when worn covers a wearer's torso, between the wearer's waist and the

wearer's legs, and further having two leg portions (14) each of which when worn covers one of the wearer's legs (page 3, lines 11-18, Fig. 1). Each leg portion (14) has an upper region (16) which extends downwardly from the upper portion (12), and a lower region (18) which extends upwardly from a lower end (20) of the leg portion (14) toward the upper region (16) and which terminates not higher than where the leg portion (14) when worn covers the wearer's knee (page 3, lines 11-18, Fig. 1). Each of the upper and lower regions (16,18) has an outer layer (24,22) of material, wherein the material of the outer layers (22) of the lower regions (18) has a greater resistance to punctures than the material of the outer layers (24) of the upper regions (16) (page 3, line 22 - page 4, line 4).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. §102(b) as being anticipated by Campbell (US 4,601,066). Claims 3, 4, 7 and 8 are rejected under 35 U.S.C. §103(a) as unpatentable over Campbell in view of Eastbay Lined Windpants (catalog page 19).

ARGUMENT

Rejection Under 35 U.S.C. §102(b) Over Campbell (US 4,601,066)

Claim 1

The rejection is based on a factual error by the Examiner.

More specifically, the claims are directed towards a protective pair of pants and claim 1 recites a lower region for each of the leg portions of the pants wherein the lower region has "a puncture-resistant layer made from a cloth fabric that is puncture-resistant", the cloth fabric being "resistant to punctures by snakes or by thorny or spiky plants", and, an upper

region of each leg portion having “an outer layer of abrasion resistant material, the abrasion-resistant material being less resistant to punctures than the puncture-resistant cloth fabric”. This structure is neither shown nor suggested in Campbell. The shortcomings of the reference was pointed out to the Examiner in Applicants’ Amendment “B” filed November 24, 2008, and in response, at page 5 of the final Office Action, the Examiner makes the unsupported assertion that “the bindings of Campbell (55) would be more resistant to puncture than the material of the remainder of the tights garment.” However, there is absolutely nothing in Campbell to support this assertion, and the Examiner has pointed to nothing to support this assertion. Nowhere in Campbell’s disclosure is it shown, or even suggested, that the “soft material” (column 4, line 8) of the bindings (55) are made of any different material than the remainder of the legs (48a) and (48b) of the disclosed tights (12), let alone that the material or cloth fabric of the bindings (55) “would be more resistant to punctures than the material of the remainder of the tights garment” as asserted by the Examiner at page 5 of the final Office Action. Indeed, to the contrary of the Examiner’s assertion, Campbell indicates that the jersey (11) and tights (12) and the soft material of the bindings (55) would both be fabricated of “standard garment materials” (column 4, lines 24-26). Accordingly, the rejection of claim 1 and its dependent claims is based on a factual error and should be withdrawn.

Claim 5

Similar to claim 1, independent claim 5 recites “the material of the outer layers of the lower regions has a greater resistance to punctures than the material of the outer layers of the upper regions.” Again, to overcome the failings of the reference, the Examiner relies on the same unsupported assertion as used in rejecting claim 1. Accordingly, for the same

reasons discussed above in connection with claim 1, the rejection of claim 5 and its dependent claims is based on a factual error and should be withdrawn.

Claims 2 and 6

Claim 2 depends from independent claim 1 and recites that the upper portion also has the outer layer of abrasion-resistant material. Claim 6 depends from independent claim 5 and recites that the upper portion and the upper regions of the leg portions have an outer layer of abrasion-resistant material. Contrary to the naked assertion by the Examiner, this structure is neither shown nor suggested in Campbell. In this regard, the Examiner asserts without any support that the right and left leg sections 48a and 48b have an outer layer of abrasion-resistant material, but there is nothing in Campbell to support this assertion. Accordingly, for this additional reason, the rejection of dependent claims 2 and 6 is improper and should be withdrawn.

Rejection Under 35 U.S.C. §103(a) over Campbell
in view of Eastbay Lined Windpants (catalog page 19)

Claims 3 and 7

Claim 3 depends from independent claim 1 and claim 7 depends from independent claim 5. The Examiner relies on the same unsupported assertions as used in rejecting claims 1 and 5, and makes a similar unsupported assertion that the lower region of each leg portion of Eastbay Lined Windpants "has the layer of puncture-resistant material (see description and picture of Eastbay Lined Windpants: page 19)". However, as with Campbell, there is absolutely nothing in the description or picture of page 19 of Eastbay Lined Windpants that supports this assertion, let alone anything in the Eastbay Lined Windpants reference that shows or suggests the recitations discussed above in connection

with claims 1 and 5. Accordingly, the rejection of claims 3 and 7 is improper and should be withdrawn.

Claim 4

Claim 4 depends from claim 1 and characterizes the upper portion of the upper regions of the leg portions as having the outer layer of abrasion-resistant material. For the reasons stated above in connection with dependent claims 2 and 6, the rejection of claim 4 is improper and should be withdrawn. Furthermore, claim 4 recites that "only the lower region of each leg portion has the puncture-resistant layer". Again, contrary to another naked assertion by the Examiner, Eastbay Lined Windpants does not disclose or suggest this structure. Accordingly, for this additional reason alone, the rejection of claim 4 is improper and should be withdrawn.

Claim 8

Claim 8 depends from independent claim 5 and characterizes the upper portion in the upper regions of the leg portions as having an outer layer of abrasion-resistant material. For the reasons discussed above in connection with claims 2, 4 and 6, the rejection of claim 8 is improper and should be withdrawn.

SUMMARY OF ARGUMENTS

The rejections are improper because the references relied upon fail to show and/or suggest every aspect of the claimed invention. See MPEP 706.02 *et seq.* See also MPEP 2131 stating that "To anticipate a claim, the reference must teach every element of the

claim" and MPEP 2143 *et seq.* stating that "the prior art reference (or references when combined) must teach or suggest all of the claimed limitations". In this case, the references fail, and the Examiner's naked assertions do nothing to overcome the failings of the references.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the rejections of claims 1-8 should be withdrawn and the claims allowed.

Respectfully submitted,

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CLAIMS APPENDIX

1. A pair of protective pants having an upper portion which when worn covers a wearer's torso, between the wearer's waist and the wearer's legs, the pair of protective pants having two leg portions, each of which when worn covers one of the wearer's legs, wherein each leg portion has an upper region which extends downwardly from the upper portion, and a lower region which extends upwardly from a lower end of said leg portion toward the upper region and which terminates not higher than where said leg portion when worn covers the wearer's knee, wherein the lower region has a puncture-resistant layer made from a cloth fabric that is puncture-resistant, the puncture-resistant layer extends upwardly from the lower end of said leg portion and surrounds the lower end of said leg portion, the cloth fabric being resistant to puncture by snakes or by thorny or spiky plants, wherein the upper region of each leg portion has an outer layer of abrasion-resistant material, the abrasion-resistant material being less resistant to punctures than the puncture-resistant cloth fabric.

2. The pair of protective pants of claim 1 wherein the upper portion also has the outer layer of abrasion-resistant material.

3. The pair of protective pants of claim 1 wherein the upper portion and the leg portions, from the upper portion to the lower ends of the leg portions, have one or more inner layers.

4. The pair of protective pants of claim 1 wherein the upper portion and the upper regions of the leg portions have the outer layer of abrasion-resistant material, wherein the upper portion and the leg portions, from the upper portion to the lower ends of the leg portions, have one or more inner layers, and wherein only the lower region of each leg portion has the puncture-resistant layer.

5. A pair of protective pants having an upper portion which when worn covers a wearer's torso between the wearer's waist and the wearer's legs, the pair of protective pants having two leg portions, each of which when worn covers one of the wearer's legs, each of the leg portions having an upper region which extends downwardly from the upper portion, and a lower region which extends upwardly from a lower end of the leg portion toward the upper region and which terminates not higher than where the leg portion covers the wearer's knee when worn, each of the upper and lower regions having an outer layer of material, and wherein the material of the outer layers of the lower regions has a greater resistance to punctures than the material of the outer layers of the upper regions.

6. The pair of protective pants of claim 5 wherein the upper portion and the upper regions of the leg portions have an outer layer of abrasion-resistant material.

7. The pair of protective pants of claim 5 wherein the upper portion and the leg portions, from the upper portion to the lower ends of the leg portions, have one or more inner layers.

8. The pair of protective pants of claim 5 wherein the upper portion and the upper regions of the leg portions have an outer layer of abrasion-resistant material, and wherein the upper portion and the leg portions, from the upper portion to the lower ends of the leg portions, have one or more inner layers.

EVIDENCE APPENDIX

There is no evidence that has been entered by the Examiner and relied upon by Appellant.

RELATED PROCEEDING APPENDIX

An Appeal on this application was previously filed October 13, 2005, and Request for Continued Examination was filed on July 17, 2006 before any decision by the Board of Appeals.